

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IN RE: CAPITAL ONE CONSUMER DATA)
SECURITY BREACH LITIGATION)
_____)

MDL No. 1:19md2915 (AJT/JFA)

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CLERK U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

This Document Relates to ALL Cases

**APPLICATION FOR THE APPOINTMENT OF
ANNE T. REGAN AND MICHAEL R. CASHMAN TO
THE PLAINTIFFS STEERING COMMITTEE**

Pursuant to Pretrial Order #1 [Doc. 3] and Federal Rule of Civil Procedure 23(g), Anne T. Regan and Michael R. Cashman of Hellmuth & Johnson respectfully apply for appointment to serve on the Plaintiffs Steering Committee ("PSC"). Ms. Regan and Mr. Cashman represent four Capital One credit card customers whose lawsuit against Defendants has been transferred to this Court.¹ Their clients are residents of Minnesota, New Mexico, and Washington. Under the criteria enumerated by the Court, Ms. Regan and Mr. Cashman are exceedingly well qualified to justly and expeditiously prosecute to judgment or resolve this case on behalf of the putative class. They respectfully request that the Court appoint them as members of the PSC.

Hellmuth & Johnson also supports the application of W. Lewis ("Lew") Garrison, Jr., of Heninger Garrison Davis, as Interim Lead Counsel, and understands that Mr. Garrison also supports their application to the PSC.

I. MS. REGAN AND MR. CASHMAN HAVE EXTENSIVE EXPERIENCE IN COMPLEX LITIGATION.

Ms. Regan and Mr. Cashman are partners of the law firm Hellmuth & Johnson, and they focus their practices on class actions and multi-district litigation. Their substantial experience

¹ See *Lundgren et al. v. Capital One Fin. Corp. et al.*, Case No. 2:19-cv-01361, which is listed on Schedule B to Pretrial Order #1.

advocating for both plaintiffs and defendants in complex class actions and multi-party mass tort lawsuit will benefit the members of the putative class and the leadership team in this case.

Hellmuth & Johnson counts among its almost 50 lawyers a deep roster of litigators and trial attorneys who bring a wealth of experience in class action lawsuits and multi-district litigation, including four partners who exclusively practice in complex class action or aggregate litigation, and additional partners and associates with deep experience in class action and multi-district litigation involving data breaches, antitrust, and consumer fraud. An overview of Hellmuth & Johnson's complex litigation practice, including its lawyers' notable representations, is attached hereto as **Exhibit A**, and Ms. Regan's CV and Mr. Cashman's biography are attached as **Exhibit B** and **Exhibit C**, respectively.

Examples of Ms. Regan's, Mr. Cashman's, and Hellmuth & Johnson's MDL and most recent class leadership experience include:

- *In re Intel Corp. CPU Marketing, Sales Practices and Products Liab. Litig.*, MDL 2828: Hellmuth & Johnson is a member of the Interim Plaintiffs Steering Committee appointed to represent the interests of Regulated Entity Plaintiffs in their lawsuit based on security vulnerabilities in Intel's processors that may be exploited to permit unauthorized access to information stored in the processor.
- *In re CenturyLink Sales Practices and Securities Litig.*, MDL 2795: Ms. Regan and Hellmuth & Johnson hold an ongoing leadership role on the Plaintiffs Interim Executive Committee pursuing claims against the global communications and IT services company for fraudulent and deceptive sales and billing practices. They have contributed substantial attorney resources to every aspect of the case, including formation of case strategy, preparation of pleadings, and conducting of fact and expert discovery.
- *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Prods. Liab. Litig.*, MDL 2672: Hellmuth & Johnson was part of the Discovery Subcommittee tasked with preparing written discovery and organizing the review and analysis of documentary evidence of VW's fraudulent concealment of devices that defeated clean-air technology.
- *In re Target Corporation Customer Data Security Breach Litig.*, MDL 2522. Ms. Regan was a member of the lead counsel expert briefing team, representing financial institutions damaged by a data breach of customer payment cards.

- *In re National Hockey League Players' Comm'n Injury Litig.*, MDL 2551. Mr. Cashman and Hellmuth & Johnson served on the Executive Committee representing retired hockey players seeking recourse for long-term brain injuries resulting from blows sustained when they played in the NHL.

Additionally, Ms. Regan currently is counsel and admitted *pro hac vice* in *D&M Farms, et al. v. Birdsong Farms, et al.*, No. 2:19-cv-00463, a class action alleging violations of the Sherman Act, pending before Judge Morgan in the Norfolk Division of this District Court.

II. MS. REGAN AND MR. CASHMAN ARE WILLING AND ABLE TO COMMIT SUBSTANTIAL RESOURCES TO THE TIME-CONSUMING DEMANDS OF THIS CASE.

Ms. Regan and Mr. Cashman, as well as their litigation team at Hellmuth & Johnson, have the capacity and experience to carry out the responsibilities required of attorneys appointed to the PSC. Just as it has done in other major cases, Hellmuth & Johnson immediately will commit the necessary professional and financial resources to assist Interim Lead Counsel with fulfilling all duties, including those set forth in Pretrial Order #1 that must be completed in advance of the Initial Status Conference and Rule 16(b) Conference on January 21, 2020.

III. MS. REGAN AND MR. CASHMAN HAVE A LONG HISTORY OF WORKING COOPERATIVELY WITH COUNSEL.

Ms. Regan and Mr. Cashman pride themselves on working cooperatively with many plaintiff and defense attorneys and firms, some of whom have filed cases in this MDL, including counsel at the Heninger Garrison law firm, which is applying for Interim Lead Counsel, as well as the members of the proposed PSC. They consistently collaborate cooperatively with all co-counsel and collegially with opposing counsel while working to obtain exceptional results for their clients and putative class members.

IV. MS. REGAN AND MR. CASHMAN WILL COMMIT THE NECESSARY RESOURCES TO PURSUE THIS MATTER EXPEDITIOUSLY.

Ms. Regan and Mr. Cashman, through Hellman & Johnson, are willing and able to expend the financial and professional resources necessary to ensure the vigorous prosecution of the putative class's claims in an expeditious manner. As demonstrated by the matters described in Exhibit A, Hellmuth & Johnson has led and funded complex class action cases against some of the largest and wealthiest corporations in the world, and its commitment in this case will be no different.

Moreover, Hellmuth & Johnson attorneys recently have demonstrated in the cases referenced above that they have the experience and ability to efficiently and expeditiously marshal resources and oversee the review of large-scale documentary evidence. Both have participated extensively in deposition, briefing, and class settlement teams.

V. COMPENSATION ARRANGEMENTS.

The Court requested that applicants address “any compensation arrangement that counsel is willing to accept.” [Doc. 3 at 4]. If selected to the PSC, Hellmuth & Johnson is willing to adopt a fee schedule or matrix, as determined by Interim Lead Counsel and the Court, setting the billing rates in the event of a class action settlement or judgment, regardless of whether its attorneys may have been approved at higher rates in other cases. Hellmuth & Johnson understands that partner, associate, document review, and paralegal billing rates may be capped to reflect prevailing market rates in Northern Virginia.

If a common fund is established, Hellmuth & Johnson will follow “the common practice within this Circuit,” namely, “apply[ing] the percentage-of-recovery method and then use the lodestar method as a ‘cross-check.’” *See In re Neustar, Inc. Sec. Litig.*, No. 1:14cv885 (JCC/TRJ), 2015 WL 8484438, * 7 (E.D. Va. Dec. 8, 2015); *In re The Mills Corp. Sec. Litig.*,

265 F.R.D. 246, 260 (E.D. Va. 2009). The appropriate percentage will ultimately be determined by this Court, before or after Interim Lead Counsel and the PSC make any fee application. Hellmuth & Johnson's retainer agreements with its clients reflect these considerations.

CONCLUSION

For the reasons set forth above, Anne T. Regan and Michael R. Cashman are prepared to apply their time, resources, and experience to benefit and serve members of the putative class and assist Lead Counsel in this MDL, and they respectfully request the Court's appointment to the PSC.

HELLMUTH & JOHNSON, PLLC

Dated: November 18, 2019

By: /s/ Michael R. Cashman

Michael R. Cashman, MN Bar No. 0206945

(admitted *pro hac vice*)

Anne T. Regan, MN Bar No. 0333852

(*pro hac vice* to be filed)

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